

Update Colorado's Fertilizer Regulatory Laws



Background

The Colorado Commercial Fertilizer, Soil Conditioner, Plant Amendment, and Agricultural Liming Material Act provides for the regulation of a variety of agricultural plant food and soil amendment materials. The law protects agricultural producers, consumers, and the environment from adulterated and mislabeled products. Fertilizers, soil conditioners, and plant amendments used for agricultural production, home, and lawn and garden use are inspected, sampled, and analyzed. The program is funded at 50 percent cash and 50 percent general fund.

Colorado's fertilizer regulatory structure is modeled after the Association of American Plant Food Control Officials (AAPFCO) to ensure the integrity of fertilizer products and to establish uniformity of laws among the states to facilitate interstate commerce. Colorado's laws have not been updated for 30 years, and the lack of uniformity has the potential to create unnecessary disruptions to competition in the market place.

Current law also contains requirements for farmers and fertilizer manufacturers that are no longer necessary or relevant or which are unable to meet current needs.

Proposal Summary

CDA is proposing to bring Colorado's fertilizer law into conformity with the AAPFCO model legislation. The proposal also contains a number of "housekeeping" changes. It reduces the reporting frequency by eliminating semi-annual reports and eliminates automatic penalty assessments for certain label shortcomings and short weight violations. It eliminates brand registration requirements and adds a number of definitions to clarify the intent of the law and gives the Commissioner certain discretionary authorities.

CDA is also proposing to modify the statute to allow the department to register and regulate the composting industry to ensure that products labeled as compost have undergone proper treatment to eliminate pathogens in the product.

CDA began discussions with the agriculture and composting industries two years ago in an effort to find an acceptable means to reconcile the definitional "gray area" regarding compost. While compost has minimal plant nutrient qualities, it is a product that does not truly qualify as a "fertilizer" in the common sense of the word. Compost is commonly used as a soil conditioner, similar to soil conditioners regulated by the department that build soil tilth and help retain moisture. However, current law requires "soil conditioners" to be registered with the department and to undergo testing, a situation that is unworkable given the vast quantities of compost that are used in the state annually. Furthermore, soil conditioners are not exempt under the state's sales tax, as is fertilizer. By levying sales taxes on bulk compost, the use of composting as a safe and environmentally preferable means to treat livestock manure and other agricultural wastes would be effectively discouraged. However, by classifying compost as a "fertilizer" would subject it to the state's fertilizer tonnage fees of \$0.75 per ton. Tonnage fees are levied to pay part of the cost of the fertilizer regulatory program (\$0.25 per ton) and to the Groundwater Protection Fund (\$0.50 per ton). Since compost is of minimal nutritive value and poses no threat to the state's groundwater, the tonnage fee would, in the department's view, be levied unfairly.

During the discussions with the ag groups and the composters, it came to the department's attention that some materials being sold as compost are simply treated manure and have not undergone the proper composting process that kills pathogens and weed seeds. Current law provides the Colorado Department of Public Health and Environment the authority to register commercial composting facilities to provide oversight to the composting process. However, CDPHE does not regulate agricultural composters nor does it regulate the end product. CDA has

been asked by commercial composting companies to extend the department's current authorities under the fertilizer to assure the quality of the end product of composting.

CDA is proposing to register all composters, commercial and agricultural and to require the composters to state on the product label whether the product is a "soil conditioner", "fertilizer" or simply "compost". Based on the nature of the label claims, the product would either be regulated as a fertilizer or soil amendment and therefore be subject to laboratory analysis and appropriate fees and taxes. However, if a manufacturer makes no label claims other than as merely "compost", the department would forego regulatory oversight.